

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MITCHELL BRODSKY,

Plaintiff,

vs.

SPENCER ABRAHAM, Secretary of the
Department of Energy,

Defendant.

Case No.: 2:04-cv-00569-JCM-GWF

FINDINGS & RECOMMENDATIONS
AND ORDER

This matter is before the Court on Defendant's Motion to Dismiss This Action Based Upon Plaintiff's Failure to Comply with the Court's April 17, 2006 Discovery Order and Request for Attorney's Fees and Costs (#30), filed on May 18, 2006; Plaintiff's Opposition to Motion to Dismiss and Request for Attorney's Fees and Costs (#38), filed on June 19, 2006; and Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss (#41), filed on July 17, 2006. The Court heard this matter on August 3, 2006.

DISCUSSION

On April 17, 2006, the Court granted Defendant's motion to compel requiring Plaintiff to provide responses to requests for production of documents and to provide responsive and executed answers to interrogatories. *See Order* (#28). Although Plaintiff alleges a claim for emotional distress damages and stated in prior discovery responses that he suffered physical consequences from his alleged emotional distress and sought medical and mental health care treatment for the same, he has refused to produce his relevant medical or mental health records or to execute an authorization to

1 permit Defendant to obtain copies of his records through subpoena. The Court therefore finds and
2 recommends that Plaintiff's claim for emotional distress damages in this case should be stricken and
3 that he should be precluded at the trial of this action from seeking recovery of damages for his alleged
4 emotional distress.

5 In response to the Court's April 17, 2006 order (#28), Plaintiff served supplemental answers to
6 interrogatories, which like Plaintiff's original answers to interrogatories were not executed by the
7 Plaintiff as required by Fed. R. Civ. Pro. 33. As of this date, Plaintiff has still not provided signed and
8 verified answers to interrogatories. Plaintiff's supplemental answers to interrogatories are still deficient
9 in failing to adequately set forth the identities of witnesses who have knowledge relating to his claim, or
10 more particularly, in describing and producing the documents relating to his claims. In addition, the
11 Court is advised that Plaintiff has not complied "formally" with his disclosure obligations under Fed. R.
12 Civ. Pro. 26(a).

13 Accordingly,

14 **IT IS HEREBY RECOMMENDED** that Plaintiff's claim for emotional distress damages in
15 this action be stricken and that he be precluded at trial from introducing evidence or seeking recovery of
16 such damages.

17 **IT IS HEREBY ORDERED** that Plaintiff shall serve fully executed and verified Answers to
18 Interrogatories on or before September 1, 2006.

19 **IT IS FURTHER ORDERED** that discovery in this action shall be reopened through and
20 including October 1, 2006 so that the parties may complete the remaining discovery, including further
21 deposition of the Plaintiff regarding his answers to interrogatories and discovery responses that were
22 not provided prior to his previous deposition. The parties shall submit a proposed amended discovery
23 plan and scheduling order in this regard. No further extensions of discovery will be granted.

24 **IT IS FURTHER ORDERED** that no attorney's fees or costs are awarded.

25 DATED this 3rd day of August, 2006.

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28 GEORGE FOLEY, JR.
U.S. MAGISTRATE JUDGE